

App. No. 09/759,698

**REMARKS/ARGUMENTS**

In response to the present Office Action, the Applicant sets forth the following amendments and remarks. Claims 1 and 3 - 12 were pending in the amended application following the response to the Office Action mailed September 13, 2002. In this response to the present Office Action, claims 1 and 8 - 10 have been amended. Claim 7 has been deleted. As a result, claims 1, 3 - 6, and 8 - 12 remain pending in the present application. The Applicant respectfully requests further examination of the application in light of the accompanying remarks.

**Rejection of Claims 1, 5 - 8, and 10 Under 35 U.S.C. § 102(b)**

The Examiner rejected claims 1, 5 - 8, and 10 under 35 U.S.C. § 102(b) as being anticipated by Hatmaker (US 3,871,145). The rejection is respectfully traversed.

For a prior art reference to anticipate the present invention, every element of the claimed invention must be identically shown in a single prior art reference. In this respect, the Applicant respectfully asserts that Hatmaker does not show every element of the claimed present invention. For example, amended claim 1 of the present application includes the element of a base flap portion. Despite the Examiner's allegation in the present Office Action, the Applicant respectfully disagrees with the Examiner's assertion that Figures 3 and 5 of Hatmaker depict a base flap portion.

The Examiner has made a notation on Figure 5 of Hatmaker alleging that a "flap base portion" is shown. With respect to the Examiner's notation, the Applicant respectfully asserts that the feature highlighted by the Examiner is simply an "overlapping seam ... of the flashing" (See Hatmaker, Column 3, Line 21) that is "held together by fastening means." (See Hatmaker, Column 2, Lines 32 - 33) As shown in

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Hatmaker, this overlapping seam consists of two portions located on either side of the split in the flaring portion that are overlapped and fastened to form the seam. No other material covers the seam area on the flaring portion of the flashing described in Hatmaker.

In contrast, the base flap portion of the present invention provides an additional layer of material in the vicinity of a seam formed by the overlapping of the first and second portions of the base portion. Numerous advantages provided by the base flap portion include, but are not limited to:

- providing an additional layer of material protecting the seam joining the first and second portions of the base portion;
- providing an additional sealing surface over the seam between the first and second portions of the base portion;
- providing a surface to advantageously shed rainwater over a seam in the apparatus of the present invention; and
- allowing the first and second portions of the base portion to be spread beyond an overlapping position while the base portion is sealed using the base flap portion to accommodate an oversized roof protrusion.

At least in this respect, the Applicant respectfully contends that the Examiner's prior art of Hatmaker does not disclose every element of the invention claimed in the present application. As a result, the Applicant respectfully asserts that the Examiner's rejection with respect to independent claim 1 of the present invention may be withdrawn. In addition, the Applicant respectfully submits that by distinguishing

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independent claim 1, the outstanding rejections of dependent claims 5, 6, 8, and 10 may also be properly withdrawn.

Rejection of Claims 3, 4, 9, 11 and 12 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 3, 4, 9, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Hatmaker in view of Gentry (US 4,625,469). The rejection is respectfully traversed.

As presented in the remarks above, the present invention is distinguished from Hatmaker. The Applicant respectfully asserts that Gentry does not add the necessary elements to Hatmaker to render the present invention as obvious. Gentry also lacks the element of a base flap portion. As a result, the Applicant respectfully submits that Hatmaker in view of Gentry cannot support a rejection of claims 3, 4, 9, 11 and 12 under 35 U.S.C. § 103(a).

**CONCLUSION**

The Applicant has canceled claim 7, and amended independent claims 1 and 8 - 10 to more clearly describe the subject matter recited therein. The Applicant has further distinguished the present invention from the teachings of the references cited as prior art by the Examiner. As a result of the amendments, claims 1, 3 - 6, and 8 - 12 remain pending in the present application.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings To Show Changes Made."

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Therefore, the Applicant respectfully submits that the present application is now  
in condition for allowance, and such action is earnestly requested.

Respectfully submitted,

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By: \_\_\_\_\_

Robert G. Hall

Robert G. Hall

Registration No. 51,099

Jeffrey S. Standley

Registration No. 34,021

Standley &amp; Gilcrest LLP

495 Metro Place South

Suite 210

Dublin, Ohio 43017-5319

Telephone: (614) 792-5555

Facsimile: (614) 792-5536

E-mail: jstandley@standleyandgilcrest.com

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